

MINUTES OF JANUARY 25, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 25, 2016, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard, with Mr. James Sharp – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Rickard.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda with the Old Business moved to the beginning of the Agenda. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for December 14, 2015 as circulated. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

OLD BUSINESS

Case No. 11686 – Immanuel Shelter, Inc. – seeks a special use exception to operate an emergency homeless shelter (Section 115-72C of the Sussex County Zoning Ordinance). The property is located on the northwest corner of Hebron Street and Burton Avenue. 911 Address: 19878 Hebron Road, Rehoboth Beach. Zoning District: B-1. Tax Map No.: 3-34-13.19-2.00.

Ms. Cornwell presented the case, which has been tabled since December 21, 2015.

Mr. Mills stated that the Applicant presented a strong case; that the opposition did not provide any professional witnesses to show how the shelter would negatively impact the neighborhood; and that he feel the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Hudson stated that he believes the proposed shelter is too close to the existing West Side New Beginnings children center; that the community has made big improvements over the years to create a safer environment; and that the children's safety is a main concern.

Mr. Workman stated that he believes the use is out of character with the neighborhood; that the crime has been significantly reduced in the area; that the neighborhood is concerned for the children's safety; that the shelter will change the character of the neighborhood; and that the use will substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Callaway stated that he believes the use is out of character for the neighborhood; that the community has testified the use will substantially adversely affect the uses of the neighboring and adjacent properties; and that the children's safety is a big concern.

Mr. Rickard stated that the crime has been reduced in the area; that the use will substantially adversely affect the uses of the neighboring and adjacent properties; and that he questioned who would enforce the rules of the shelter.

Mr. Rickard stated that he would move that the Board deny the Special Use Exception Application No. 11686 for the requested special use exception based on the record made at the public hearing and for the following reasons:

1. The Applicant failed to demonstrate that the proposed use will not substantially affect adversely the uses of the neighboring and adjacent properties.
2. The Applicant produced evidence that up to 22 individuals will live in the five bedroom shelter who are anticipated to stay at the shelter from 30 to 60 days, up to a maximum of 90 days and will be required to leave the shelter daily for work and appointments as needed. The Applicant presented testimony that many of the residents will likely bike or walk to a bus shelter for transportation to work and appointments. The bus shelter is located less than a mile from the Property. (Conflicting testimony was presented as to the actual distance from the homeless shelter to the bus stop but it was clear that the bus stop was within a mile of the site). As a result, the traffic in the neighborhood will be significantly increased. This increase in traffic is particularly troubling since the adjacent Hebron Road has no shoulders or sidewalks. The opposition has presented convincing testimony that the traffic along Hebron Road has been problematic and dangerous. The opposition cited that there have numerous pedestrian and bicycle accidents in the area. The addition of the homeless shelter will likely exacerbate the traffic and safety concerns in the area.
3. The proposed homeless shelter is to be located on land near residential properties and an operating children's center (West Side New Beginnings). The West Rehoboth community is a neighborhood with a long history – one which is recognized as important to the Board. At various points in time, however, the area suffered from crime and drug problems. Much effort and emphasis has been placed on improving the West Rehoboth community in recent years. These efforts have proven effective as the West Rehoboth community has also experienced a significant decrease in crime in recent years – including a 69% reduction in service calls to West Rehoboth over the last five (5) years. It is likely that such a decrease in crime is attributed to programs such as West Side New Beginnings which help give youth in West Rehoboth positive direction. The Board is concerned that the substantial adverse effect on the West Side New Beginnings program will be amplified to the overall West Rehoboth community. The homeless shelter is proposed to be located approximately 150 feet from West Side New Beginnings, which is a children's center used for educational programs for

children in the area. Children often bike or walk to and from West Side New Beginnings unattended by an adult or are dropped off by a school bus nearby. Other children are transported to the Center by their parents or family members. As part of the West Side New Beginnings program, children are active in the community outside of the confines of the children's center. Participants engage in clean-up activities, fundraisers, and outdoor recreation in West Rehoboth. The opposition expressed concerns, however, that the proposed homeless shelter located so close to the children's center will have a chilling effect on the participation of children in the programs at West Side New Beginnings. The opposition argued that parents will be reluctant to send their children to West Side New Beginnings due to the homeless shelter and participation in West Side New Beginnings will decline. This argument is both persuasive and convincing. A decline in participation at West Side New Beginnings will undoubtedly have a substantial adverse effect on the use of that neighboring property. A decline in the participation at West Side New Beginnings will also likely lead to the slowing or halt the momentum of the revitalization of the West Rehoboth community. Furthermore, the Board recognizes that children are an important and vulnerable class of people that the government has a compelling interest in protecting. Ensuring the safety and protection of this particularly vulnerable population required an affirmative showing by the Applicant as to how this particular use will not substantially affect adversely this particular population. We believe that this particular showing has not been made and as a result this proposed shelter will likely have a negative effect on the children's center and the vulnerable population served there. The Breakwater Junction bike trail is also located nearby and members of the opposition expressed concern that the homeless shelter would deter use of the trail; which has been a popular recreational trail used by tourists.

4. The Board also notes that there is significant opposition within the nearby West Rehoboth Community to the Application. The Board received correspondence and a petition signed by 68 neighbors objecting to the Application. The voice of the community is one which does not appear to support the shelter and the Board has taken this factor into consideration as well.
5. Ultimately, and for the above stated reasons, the application for a special use exception should be denied because the proposed homeless shelter will substantially affect adversely the uses of the neighboring and adjacent properties, and in addition, the particularly vulnerable population of nearby children enrolled at the already established West Side New Beginnings children's center.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried that the special use exception be **denied for the reasons stated**. Motion carried 4 – 1.

Mr. Mills voted nay to the motion and stated that there are differing uses of property in the neighborhood; that the existing building will not change the appearance of the neighborhood; that the Applicant planned to add additional lighting and a fence to the Property; that the Applicant had testimony from a real estate appraiser stating homeless shelters do not affect property values and

the proposed use is the highest and best use of the Property; that the opposition did not present any expert testimony to the contrary; that the Applicant submitted a proposed set of rules and regulations which indicated the residents will be vetted by the Homeless Planning Council and HUD system; that no registered sex offenders or individuals with a history of violent offenses would be permitted to live in the shelter; that the residents would be vetted by the Delaware State Police Troop 7 prior to living in the shelter; that house rules would be implemented and enforced; that no drug, alcohol, or weapons are permitted on the property; that no visitors are permitted; that the existing building will have a comprehensive fire suppression system installed and maintained; that there is no evidence the homeless shelter would increase the noise pollution in the area; that the traffic to and from the shelter will not substantially adversely affect the uses of the neighboring and adjacent properties; that the proposed site is close to the necessities; that the Board heard testimony in support of the Application that a homeless shelter in Seaford with less resident controls is located near Seaford Christian Academy with no reported incidents; that the shelter and the Seaford Christian Academy have engaged in joint activities; that the evidence also demonstrates that the proposed homeless shelter is an ideal location for the Applicant based on the criteria for state funding; and that based on the record the Applicant demonstrated the proposed use will not substantially affect adversely the uses of the neighboring and adjacent properties.

The vote by roll call: Mr. Mills – nay, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11695 – Gerald W. Hocker, Trustee and Emily W. Hocker, Trustee – seeks a special use exception to replace two (2) billboards and variances from the height, maximum square footage, side yard setback, and separation distance from a residential dwelling requirements (Sections 115-159.5B, 115-159.5B(2), 115-159.5B(3), 115-159.5C, 115-210A(3)(p), and 115-80C of the Sussex County Zoning Ordinance). The property is located at the southeast corner of Atlantic Avenue and Roxana Road. 911 Address: 34960 Atlantic Avenue, Ocean View. Zoning District: C-1. Tax Map No.: 1-34-12.00-330.01.

Ms. Cornwell presented the case, which has been tabled since January 4, 2016.

Mr. Rickard stated that the existing billboards have been on the Property since 2000; that the request is not a need, but a want; and that the proposed billboards will substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Workman stated that the variances are being created by the Applicant; that he has an issue with the height variance; that trucks will not block the proposed billboards; and that the Property can be reasonably used without the variances.

Mr. Mills and Mr. Hudson stated that they have no issues with the variances requested.

Mr. Callaway stated that he is opposed to all the requested variances.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried that the case be tabled until February 15, 2016. Motion carried 3 – 2.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – nay, Mr. Rickard – yea, Mr. Workman – nay, and Mr. Callaway – yea.

PUBLIC HEARINGS

Case No. 11696 – John C. Wary and Patsy D. Wary – seek variances from the front yard, side yard, and rear yard setback requirements (Section 115-42B, 115-183C, and 115-185F) of the Sussex County Zoning Ordinance). The property is located on the southeast side of Laws Point Road approximately 958 feet northeast of Swann Drive. 911 Address: 36972 Laws Point Road, Selbyville. Zoning District GR. Tax Map No.: 5-33-12.16-305.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

John Wary was sworn in to testify about the Application. Ray Tomasetti, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Tomasetti stated that the Applicants are requesting a variance of 0.3 feet from the ten (10) feet front yard setback requirement for an existing dwelling, a variance of 0.4 feet from the ten (10) feet front yard setback requirement for an existing dwelling, a variance of 3.9 feet from the ten (10) feet side yard setback requirement for an existing sunroom, a variance of 3.7 feet from the ten (10) feet side yard setback requirement for an existing sunroom, a variance of 3.2 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 3.1 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 5.1 feet from the ten (10) feet rear yard setback requirement for an existing sunroom, a variance of 1.3 feet from the ten (10) feet rear yard setback requirement for an existing set of steps, a variance of 1.2 feet from the ten (10) feet side yard setback requirement for an existing deck, a variance of 1.3 feet from the ten (10) feet side yard setback requirement for an existing deck, a variance 2.9 feet from the ten (10) feet side yard setback requirement for an existing dwelling, and a variance of 2.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling.

Mr. Wary testified that he has owned the Property since 1996; that the dwelling was located on the Property at time of purchase; that the Board approved variances for the Property in 2004; that the Applicants obtained building permits to build a screen porch and a deck and to enclose an existing deck; that a recent survey showed the encroachments; that the Applicants were not aware of the encroachments; that, when the Applicants purchased the Property, they were told the lot measured 40 feet by 100 feet; that the lot actually measures 40 feet by 97 feet; that the shed was located on the Property when he purchased the lot; that the outside shower has been removed; that other homes in the community are similarly situated on those lots; that the variances do not alter the character of the neighborhood; that the Property is located in Swann Keys; that he seeks these variances to bring the dwelling and structures into compliance; that his neighbors have no objection to the Application; that he incorrectly believed the Property extended three feet into the lagoon; that a Sussex County official told him in 2004 that the deck was in compliance with the

Code; that the sunroom in the side yard was built in 2004; and that the shed and house were on the Property when he purchased the lot in 1996.

Mr. Tomasetti stated that the need for the variances was discovered when the Applicants went to sell the Property; that a Certificate of Compliance was issued for the screen porch and addition; that the 2004 survey was not as detailed as the current survey so the need for the variances was not discovered until recently; that the location of the structures has not changed since 2004; that the Applicants believed they were in compliance with the Sussex County Zoning Code; that Property is unique as it is shallow and only 40 feet wide; that other lots in Swann Keys are 50 feet wide; that the Property cannot otherwise be developed; that the variances will enable reasonable use of the Property; that the Applicants did not create the need for the variances; and that the variances are the minimum variances to afford relief.

Mr. Wary, under oath, affirmed the statements made by Mr. Tomasetti.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11696 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and shallowness;
2. The Applicants reasonably believed the Property was larger than it actually is;
3. The variances are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicants;
5. The variances do not alter the essential character of the neighborhood; and
6. The variances are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11697 – DeWayne R. Fair and Mona L. Fair – seek variances from the front yard and side yard setback requirements (Section 115-42B, 115-182D, and 115-183C of the Sussex County Zoning Ordinance). The property is located on the north side of Vacation Road approximately 220 feet west of Independence Drive. 911 Address: 31067 Vacation Road, Millsboro. Zoning District: GR. Tax Map No.: 2-34-23.00-81.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Charity Swain was sworn in to testify about the Application. Craig Aleman, Esquire, presented the case on behalf of the Applicants.

Mr. Aleman stated that the Applicants are requesting a variance of 1.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 4.7 feet from the ten (10) feet side yard setback requirement for an existing outside shower, a variance of 4 feet from the thirty (30) feet front yard setback requirement for an existing screen porch, and a variance of 6 feet from the thirty (30) feet front yard setback requirement for an existing set of steps; that the Property is narrow and the driveway is in the center of the Property, which makes it unique; that the existing home is a Class "C" manufactured home; that the home has been on the same footprint since 1984; that no changes have been made to the Property since 1984; that the Applicants purchased the Property in 2014; that no survey was completed in 2014; that the Applicants are selling the Property and a recent survey completed for settlement showed the encroachments; that the neighboring property owners support the Application; that the Property cannot otherwise be developed; that the lot is small with limited building space; that the structures would have to be destroyed to bring the Property into compliance; that the exceptional practical difficulty was not created by the Applicants; that the variances are necessary enable reasonable use of the Property; that the variances will not alter the essential character of the neighborhood; that the use is not detrimental to the public welfare; that the variances are the minimum variances to afford relief; that the variances requested are the least modifications of the regulations at issue; that the location of the well and septic system prohibit the ability to move the structures into compliance; and that the dwelling is on a permanent foundation.

Ms. Swain, under oath, affirmed the statements made by Mr. Aleman.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11697 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is 79 feet by 150 feet with an angled rear yard property line;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11698 – Mark Rongione and Diana Rongione – seek variances from the side yard setback requirement (Section 115-42B and 115-181B of the Sussex County Zoning Ordinance).

The property is located on the northwest side of Blue Teal Road approximately 414 feet northeast of Swann Drive. 911 Address: 37001 Blue Teal Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.20-45.00.

Ms. Cornwell presented the case and read one (1) letter of opposition into the record and stated that the Office of Planning and Zoning had not received any correspondence in support of the Application.

Bryan Elliott of Integrity Builders was sworn in and testified on behalf of the Applicants and testified that the Applicants are requesting a variance of one (1) foot from the ten (10) feet south side yard setback requirement for a proposed screen porch, a variance of five (5) feet from the ten (10) feet north side yard setback requirement for a proposed dwelling, and a variance of 4.5 feet from the ten (10) feet south side yard setback requirement for a proposed HVAC; that the proposed HVAC will be on the south side of the Property, which is the opposite side of the opposition's property; that Swann Keys was developed as a manufactured home park; that the development mainly consists of stick built dwellings; that a majority of the dwellings constructed now require variances to fit on the small lots; that a five (5) feet side yard setback is standard throughout the development; that the transition from mobile homes to stick-built homes has led to an increase in property values in the community; that the Property is undersized which makes it unique; that this lot is only forty (40) feet wide; that the proposed dwelling will be twenty-six (26) feet wide which is a narrow home by industry standards; that a narrower dwelling is not reasonable; that the proposed dwelling will not alter the essential character of the neighborhood; that the variances requested represent the minimum variances necessary to afford relief; that the exceptional practical difficulty was not created by the Applicants; that a twenty (20) feet wide dwelling inhibits reasonable use and would not be compliant with the Americans with Disabilities Act; that the proposed two-story dwelling will have four (4) bedrooms; that the steps will be located at the front of the dwelling; that there are parking problems within Swann Keys so it is important that off-street parking be available; that parking will be located in the front yard; that the dwelling will not be located on pilings; that the Applicants would be able to build this dwelling with no variances on a 50 feet wide lot; that he does not believe a reasonably sized dwelling will fit on this lot; that the HVAC will be on a platform; that the proposed dwelling will comply with the current flood zone regulations; and that he would agree to a variance of six (6) feet on the south side for the proposed dwelling, a 9.5 feet variance for the proposed HVAC on the south side of the Property, and no variance for the north side of the Property.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11698 for a six (6) feet variance from the south side setback requirement for the dwelling and a 9.5 feet variance from the south side setback requirement for an HVAC system based on the record made at the public hearing and for the following reasons:

1. The 40 feet wide property is unique in size and a smaller dwelling would not be ADA compliant;

2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The variances are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances, as amended, be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

The Board took a ten (10) minute recess.

Case No. 11699 – Timothy R. Scott – seek variances from the front yard and side yard setback requirements (Section 115-42B and 115-182D) of the Sussex County Zoning Ordinance). The property is located on the northeast corner of Pintail Drive and Swann Drive. 911 Address: 36921 Pintail Drive, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-1.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and one (1) letter of no objection to the Application and had not received any correspondence in opposition to the Application.

Timothy Scott and John Slaughter were sworn in and testified requesting a variance of ten (10) feet from the fifteen (15) feet corner side yard setback requirement for a proposed addition and a variance of four (4) feet from the ten (10) feet side yard setback requirement for an existing dwelling.

Mr. Scott testified that the existing Class “C” dwelling was placed on the Property in 1984; that the dwelling is on a permanent, concrete foundation; that the side yard setback requirement in 1984 was five (5) feet; that he purchased the Property in 1993; that the proposed addition will be fifteen (15) feet wide and will match the exterior of the existing dwelling; that the Property is a triangularly shaped which makes it impossible to build an addition elsewhere on the lot; that the adjacent property is a vacant lot that is actually Swann Drive; that he has rented and maintained that portion of Swann Drive without knowing it was actually a portion of Swann Drive; that the portion of Swann Drive adjacent to his property is not used by vehicles; that the triangular shaped lot is unique in shape; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the rear portion of the addition will be angled to follow the property line; that the exceptional practical difficulty was not created by the Applicant; that the adjacent vacant lot cannot be developed; that the variances will not alter the character of the neighborhood; that the lot is surrounded by water on two (2) sides; that he could not build the addition to the rear of the dwelling because of the internal layout of the house; that the rear property line is angled and only twenty (20) feet wide; that there is no traffic on the adjacent vacant lot; that there are no objections from any neighbors; that he has reduced the size of the addition to minimize

the variances being requested; that the variances will not impair the uses of the neighboring and adjacent properties; that he uses an electric scooter to aid with mobility; that he has experienced some flooding issues in the rear yard; that the lot measures 97 feet across the front and twenty (20) feet across the rear; and that the addition is to allow him to more easily navigate around his dwelling.

Mr. Slaughter testified that he is the Applicant's contractor; that the Applicant has physical difficulties; that the addition will provide additional space and storage near the Applicant's bedroom; that the proposed addition will give the Applicant more space to navigate within his home which is needed due to his physical difficulties; that the portion of Swann Drive adjacent to the Property was never constructed; that the owners of the vacant lot do not object to the variances; and that the vacant lot is unbuildable.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11699 for the requested variances based on the record made at the public hearing and the following reasons:

1. The Property is unique due to its odd shape and narrow rear property line;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances are the minimum variances to necessary afford relief.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11700 – James H. Semerteen, III and Robin Massey – seek variances from the side yard and front yard setback requirements (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the northwest corner of River Bend Drive and Thorogoods Road. 911 Address: 101 River Bend Drive, Dagsboro. Zoning District: AR-1. Tax Map No.: 2-33-5.00-41.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received three (3) letters of support to the Application and no correspondence in opposition to the Application.

James Semerteen, III and Robin Massey were sworn in and testified requesting a variance of ten (10) feet from the fifteen (15) feet side yard setback requirement for a proposed detached

garage, and a variance of 24.8 feet from the thirty (30) feet front yard setback requirement for a proposed detached garage for a through lot.

Ms. Massey testified that the Property is a corner lot in River Bend and that the Property is unique; that the existing septic system is located in the center of the Property; that the Applicants purchased the Property in 2004 and have made no additions or renovations since that time; that their neighbor does not object to the Application; that the variances requested represent the minimum variances to afford relief; that the variances are necessary to enable reasonable use of the Property; that the Applicants did not create the difficulty as they did not build the house or place the septic system; that the Applicants explored other locations on the Property to place the garage but the septic system limits the placement options; and that the proposed garage cannot be built in compliance with the setback requirements.

Mr. Semerteen testified that the proposed detached garage will measure 20 feet by 30 feet with an 8 feet by 30 feet lean to; that the owner of Lot #3 to the north of the Property has no objection to the Application; that Koszy Lane is a private road leading to a house on a river and the owner of Koszy Lane does not object to the Application; that Koszy Lane is only used for the one property; that the Applicants access the Property from River Bend Drive; that the proposed garage will line up with the existing driveway; that the proposed garage will be at least ten (10) feet from the existing septic system; that the Property is not in a flood zone; that the garage will be used for a car and a boat; that there are existing pine trees along the rear yard; that there is no garage attached to the house; that the garage will enable the Applicants to store items in the garage rather than in their yard; that a smaller garage would not afford them enough space for the storage; that there is an existing oak tree on the Property prevents the garage from being moved towards the front yard property line; that there are similar garages in the area; that the Applicants cannot access their property from Thorogoods Road or Koszy Lane; and that they would like additional time to prepare their case.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to **leave the case open until February 15, 2016, to allow the Applicant more time to prepare their case.** Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11701 – Robert McLaughlin – seeks a variance from the front yard setback requirement (Section 115-42B of the Sussex County Zoning Ordinance). The property is located on the west end of Jefferson Avenue approximately 205 feet west of South Bayshore Drive. 911 Address: 104 Jefferson Avenue, Milton. Zoning District: GR. Tax Map No.: 2-35-4.17-10.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Robert McLaughlin was sworn in and testified requesting a variance of 10.1 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; that he purchased the Property in 2014; that the existing cottage on the Property was built in the 1940s; that the Property is adjacent to the wildlife refuge and the creek; that he purchased two lots and combined them into one parcel; that the house was serviced by a cesspool; that the existing cesspool had to be replaced; that the new septic system takes up a large portion of the Property due to state and federal regulations; that the existing cottage had to be removed to allow room for the required septic system; that a portion of the Property is in the wetlands; that the proposed dwelling will measure 30 feet by 40 feet and be on pilings; that the neighbors support or have no objection the Application; that the proposed setback will be similar to the setback for another home nearby; that the proposed dwelling will not alter the character of the neighborhood; that the Property is located on a dead end street with only four houses located off of the street; that the exceptional practical difficulty was not created by the Applicant; that the proposed dwelling will consist of approximately 1,200 square feet with parking underneath; that the proposed dwelling will be 19.9 feet from the front property line which is the same distance from the front property line as the previous cottage; that the proposed dwelling, which is small, will allow for single floor living which is important to the Applicant; and that the Department of Natural Resources and Environmental Control (“DNREC”) building restriction lines encroach into the building envelope and further limit the ability of the Applicant to construct the proposed dwelling in strict conformity with the Sussex County Zoning Code.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11701 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The septic system, Federal Wetlands and DNREC restrictions make the Property unique;
2. The Property cannot otherwise be developed in strict conformity of the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11702 – Edward Resendiz – seeks a variance from the front yard setback requirement (Sections 115-42B and 115-182D of the Sussex County Zoning Ordinance). The property is located on the west side of Chief Road approximately 373 feet north of River Road. 911 Address:

28356 Chief Road, Millsboro. Zoning District: GR and MR. Tax Map No.: 2-34-34.00-83.00-6655.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.

Mr. Rickard abstained from the public hearing due to a conflict of interest and left the Council Chambers.

Edward Resendiz was sworn in and testified requesting a variance of 28.94 feet from the forty (40) feet front yard setback requirement for a proposed porch; that the existing dwelling was built in the 1950s; that the dwelling has a flat roof which is in poor shape; that the Applicant intends to replace the roof with a pitched roof to correct the existing issues with the flat roof; that the dwelling was placed on the Property prior to the enactment of the Sussex County Zoning Code; that the flat roof does not fit with the character of the neighborhood as other homes nearby have pitched roofs; that the variance will enable him to place a pitched roof; that the trusses for the proposed roof must be supported by poles; that the overhang of the pitched roof and the poles needed create a porch for the front of the dwelling; that the trusses are needed because the house may not support the weight of the roof; that the flat roof leaks often when it rains; that corn fields are located nearby; that the steps for the porch will be on the side; that the porch will not extend beyond the existing steps; that the proposed pitched roof will also create a second floor storage area; that the non-conforming dwelling makes the Property unique; that the Property cannot otherwise be developed in strict conformity; that the exceptional practical difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood; and that the proposed roof and porch will match other dwellings in the area.

Robert Todd was sworn in and testified in support of the Application and testified that he is neighbor south of the Property; and that he supports the Application.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11702 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The flat roof on the existing non-conforming dwelling make the Property unique;
2. The Applicant has encountered problems with leaks from the existing roof and he needs to improve the roof;
3. The dwelling was constructed prior to the enactment of the Sussex County Zoning Code;
4. The variance is necessary to enable reasonable use of the Property;
5. The exceptional practical difficulty was not created by the Applicant;

6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11703 – 84 Outdoor, LLC – seeks a special use exception to place a billboard and variances from the height and the separation distance from residential dwellings requirements (Section 115-159.5B, 115-159B(2), 115-159C, 115-80C, and 115-201A(3)(p) of the Sussex County Zoning Ordinance). The property is located on the southwest side of Atlantic Avenue (Route 26) approximately 675 feet northwest of Roxana Road (Route 17). 911 Address: 34848 Atlantic Avenue Ext., Ocean View. Zoning District: C-1. Tax Map: 1-34-11.00-179.05.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received a letter of no objection from the Delaware Department of Transportation (“DelDOT”) to the Application and had not received any correspondence in opposition to the Application.

Troy Speicher was sworn in and testified requesting a special use exception to place a billboard and a variance of fifteen (15) feet from the twenty-five (25) feet height requirement for a billboard, a variance of sixty-six (66) feet from the three-hundred (300) feet separation requirement from a dwelling, a variance of 145 feet from the three hundred (300) feet separation requirement from a dwelling, a variance of 160.7 feet from the three hundred (300) feet separation requirement from a dwelling, a variance of 99 feet from the three hundred (300) feet separation requirement from a dwelling, and a variance of 87 feet from the three hundred (300) feet separation requirement from a dwelling. Mr. Speicher submitted exhibits to the Board to review.

Mr. Speicher testified that the Applicant seeks the special use exception and variances to place a billboard on the Property; that the Property is currently used as a location for 84 Lumber; that the area is a commercial area with other billboards in the area; that the proposed billboard will not substantially adversely affect the neighboring properties; that the Property is a deep lot with a narrow road frontage and shared access; that the situation is unique because there are residences within this commercial area; that the proposed billboard meets the front yard setback requirement; that the Applicant cannot otherwise develop the Property; that the height variance is necessary so that the billboard can cantilever over the top of an existing building; that the existing building creates the need for the height variance because it would block the sign if the billboard was only 25 feet tall; that the nearby residences are on the other side of Route 26; that the variances needed from the separation requirements were not created by the Applicant; that the Applicant cannot move the residences; that there is a billboard located closer than the proposed billboard to the residential dwellings; that the owner of the Property is a “sister” company to the Applicant; that the Property was developed without considering the proposed billboard; that the variances will not alter the character of the neighborhood; that the Applicant never has vacant billboards; that the variances requested are the minimum variances to afford relief; that the height variance is needed

to have complete visibility of the proposed billboard; that the Route 26 expansion also limits the area available for the proposed billboard; that there are existing billboards in the area which are taller than the proposed billboard; that the building is 27.5 feet tall; that the billboard will measure 10 feet by 30 feet; that the billboard needs to be closer to the road in order to be visible; that the proposed billboard will not be used for on-premise advertising; and that the proposed billboard will not have LED capability.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until February 15, 2016**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Meeting Adjourned 11:04 p.m.